

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

DAVID NIEDERST,)	
)	
)	
Plaintiff,)	CASE NO. 1:23-CV-00117
)	
v.)	
)	JUDGE CHARLES ESQUE FLEMING
MINUTEMAN CAPITAL, LLC, et al.,)	
)	
Defendants.)	
)	
)	

PLAINTIFF DAVID NIEDERST'S OPPOSITION TO MOTION TO EXTEND TIME TO
RESPOND TO PLAINTIFF'S COMPLAINT

Pursuant to Fed. R. Civ. P. 6(b), Plaintiff David Niederst ("*Niederst*" or "*Plaintiff*"), by and through counsel, requests that this Court deny Defendants Dave Altman ("*Altman*"), Mark Caraway ("*Caraway*"), Graham Gunst ("*Gunst*"), Jonathan D. Heavey ("*Heavey*"), Adam Hudak ("*Hudak*"), Brent Leslie ("*Leslie*"),¹ Kevin McGinty ("*McGinty*"), Minuteman Capital, LLC ("*Minuteman*"), and David Neundorfer's ("*Neundorfer*") (collectively, the "*Movants*") March 16, 2023 Second Motion to Extend Time to Respond to Plaintiff's

¹ The Motion was made on behalf of Defendant Leslie. See ECF # 25 March 16, 2023 Docket Entry. Since, Defendant Leslie has moved for his own extension of time to respond to the Complaint. See ECF #30. However, Defendant Leslie's motion misses the mark. Plaintiff's counsel stated that it would consider Defendant Leslie's request, and Defendant Leslie's affidavit is insufficient not only because it lacks a notary stamp or swearing under the threat of perjury but also because it merely consists of conclusory statements without any material factual support. For the reasons stated herein, Defendant Leslie's motion (ECF # 30) should also be denied.

Complaint (ECF # 25) (the “*Motion*”). Movants refer to “Defendants” in the Motion in a general sense, which clouds the waters as to which Movant is represented by which counsel as Attorney Marburger has filed a notice of appearance on behalf of only Defendants Minuteman and Heavey. Notably, Heavey and Minuteman are also represented by not just three other attorneys in this matter but also two other law firms. Further, Attorney Marburger does not represent Defendants Neundorfer, Hudak, Caraway, Leslie, Altman, Gunst, or McGinty and therefore, Mr. Marburger’s illness should not impact Defendants Neundorfer, Hudak, Caraway, Leslie, Altman, Gunst, or McGinty’s Fed. R. Civ. P. 12 response.

In addition, a second extension only serves to further damage Plaintiff’s reputation. Despite Plaintiff’s requests, Defendants have refused to remove the defamatory YouTube video (the “*Video*”) that they used advertise Minuteman Capital’s business and lure investors and customers. Since Defendants published the Video, which not only attacked Plaintiff but also his family and business, Defendants have refused to take the Video down and issue a retraction. The Court should not permit Movants any additional time to respond to the Complaint and allow Defendants to continue to promote their business interests at the expense of Plaintiff’s reputation. Accordingly, the Court should deny the Motion.

Respectfully Submitted,

KOHRMAN JACKSON & KRANTZ LLP

/s/ Jon J. Pinney

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CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing was filed electronically via the Court's electronic docketing system on March 24, 2023. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. Parties may access this filing through the Court's system.

/s/ Jon J. Pinney

Jon J. Pinney

Counsel for Plaintiff